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FEDERAL MARITIME COMMISSION

46 CFR Part 502

Docket No. 15-09

RIN: 3072 – AC62

Amendments to Rules of Practice and Procedure Governing Time and Service in Adjudicatory Proceedings

AGENCY: Federal Maritime Commission

ACTION: Direct Final Rule; request for comments

SUMMARY: The Federal Maritime Commission proposes to amend its rules of practice and procedure concerning time and service in adjudicative proceedings. These revisions improve consistency across various processes and increase efficiency for parties to proceedings.

DATES: This rule is effective November 30, 2015, without further action, unless significant adverse comments are filed prior to October 30, 2015. If significant adverse comment is received the Federal Maritime Commission will publish a timely withdrawal in the Federal Register.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

- *E-mail:* secretary@fmc.gov. Include in the subject line: “Docket No. 15-09, Comments on Amendments to Rules of Practice and Procedure Governing Time and Service.” Comments should be attached to the e-mail as a Microsoft Word or text-searchable PDF document. Comments containing confidential information should not be submitted by e-mail.
- *Mail:* Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001.
- *Docket:* To read background documents or comments received in response to this docket, go to: http://www.fmc.gov/electronic_reading_room/proceeding_or_inquiry_log_search.aspx; and select Docket No. 15-09 from the list of docket logs provided.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001. Phone: (202) 523-5725. E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (FMC or Commission) is amending its rules of practice and procedure concerning time and service in adjudicatory proceedings.

Computation of Time

Currently the rules set out a variety of different formulas and conventions for computing time. Section 502.101 of Subpart G specifies that in computing periods of time under the rules, Saturdays, Sundays, and holidays should be counted, but that “[w]hen the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, or national holidays shall be

excluded from the computation.” Throughout part 502 various sections reference a five (5) day deadline but do not cross-reference § 502.101, which may create confusion. For consistency and to streamline and simplify the rules, the provision excluding weekends and holidays when a deadline is less than seven (7) days is removed, and all 5-day periods set out in part 502 are extended to seven (7) days. Consequently, all time periods will be calculated in the same manner by counting calendar days inclusive of weekends and holidays. In addition, language in § 502.101 is simplified to provide that “[i]f the last day is a Saturday, Sunday or federal holiday, the period continues to the next day that is not a Saturday, Sunday or federal holiday.”

Subpart G is also revised to simplify the structure of the rules. For example, the rules for enlargement and reduction of time to file documents currently found in §§ 502.102 and 502.103 are consolidated into § 502.102. Section 502.102 is also amended to reflect current Commission practice and standards for granting motions to enlarge time. As amended, § 502.102 would require that a party must have “reasonable grounds” for failing to file a motion for enlargement of time at least seven (7) days before the filing due date. Section 502.104 is similarly amended.

Rules on enlargement of time to file briefs and exceptions found at §§ 502.222 and 502.228 are amended because new § 502.102 covers the relevant requirements. Section 502.319 is revised to duplicate the requirements of § 502.102 to apply to formal procedures for adjudication of small claims.

Service of Documents

The service rules in Subpart H are revised to add references to service by email, and to encourage parties consistently to use of the same manner of service between parties, as that used to file documents with the Commission. The service rules are also rewritten and reorganized for clarity and ease of use.

Regulatory Analysis and Notices

Regulatory Flexibility Act

This direct final rule is not a “major rule” under 5 U.S.C. 804(2). No notice of proposed rulemaking is required; therefore, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521, requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before making most requests for information if the agency is requesting information from more than ten persons. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the proposed rulemaking. 5 CFR § 1320.11. The Commission is not proposing any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR § 1320.3(c), as part of this rule.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service

Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at:

<http://www.reginfo.gov/public/do/eAgendaMain>

Direct Final Rule Justification

The Commission expects the amendments to be noncontroversial. Therefore, pursuant to 5 U.S.C. 553, notice and comment are not required and this rule may become effective after publication in the Federal Register, unless the Commission receives significant adverse comments within the specified period. The Commission recognizes that parties may have information that could impact the Commission's views and intentions with respect to the revised regulations, and the Commission intends to consider any comments filed. The Commission will withdraw the rule if it receives significant adverse comments. Filed comments that are not adverse may be considered for modifications to Part 502 at a future date. If no significant adverse comment is received, the rule will become effective without additional action.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Maritime Commission proposes to amend 46 CFR part 502 as follows:

PART 502 – RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561-569, 571-596; 5 U.S.C. 571-584; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103-40104, 40304, 40306, 40501-40503, 40701-40706, 41101-41109, 41301-41309, 44101-44106; 5 C.F.R. Part 2635.

2. Revise Subpart G to read as follows:

Subpart G—Time

Sec.

502.101 Computation.

502.102 Enlargement or reduction of time to file documents.

502.103 [Reserved]

502.104 Postponement of hearing.

502.105 Waiver of rules governing enlargement of time and postponement of hearings.

§ 502.101 Computation.

In computing any time period prescribed or allowed under the rules in this part, the period begins on the day following the act, event, or default that triggers the period and includes the last day of the time period. If the last day is a Saturday, Sunday, or Federal holiday, the time period continues to the next day that is not a Saturday, Sunday, or federal holiday. If the presiding officer prescribes or allows an act, event, or default by reference to a specific date, that date shall govern. If the Commission's offices are inaccessible on the last day for a filing, the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or Federal holiday. [Rule101]

§ 502.102 Enlargement or reduction of time to file documents.

(a) Motions for enlargement or reduction of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, may be granted upon a showing of good cause. Motions must set forth the reasons for the request and be received at least seven (7) days before the scheduled filing date. Motions filed less than seven (7) days before the scheduled filing date may be considered where reasonable grounds are found for the failure to meet this requirement.

(b) Motions submitted after the scheduled filing date will be considered a request to accept late filing and must be accompanied by the document. These motions will only be considered when exceptional circumstances are shown or as justice may require.

(c) Motions and responses to motions filed under this section are subject to the requirements of §§ 502.69 and 502.71, except that responses to motions must be served and filed within five (5) days after the date of service of the motion.

[Rule 102.]

§ 502.103 [Reserved]

§ 502.104 Postponement of hearing.

(a) Motions for postponement of any hearing date may be granted upon a showing of good cause. Motions must set forth the reasons for the request and be received at least seven (7) days before the scheduled hearing date. Motions

filed less than seven (7) days before the scheduled hearing date may be considered where reasonable grounds are found for the failure to meet this requirement.

(b) Motions and responses filed under this section are subject to the requirements of §§ 502.69 and 502.71, except that responses to motions must be served and filed within five (5) days after the date of service of the motion. [Rule 104.]

§ 502.105 Waiver of rules governing enlargement of time and postponement of hearings.

Except as otherwise provided by law the presiding officer, for good cause, may reduce or enlarge any time limit prescribed in the rules of this Part, may waive the requirements of §§ 502.102 and 502.104 for replies, and may rule ex parte on requests submitted under those rules. [Rule 105.]

Subpart H – Service of Documents

3. Revise § 502.114 to read as follows:

§ 502.114 Serving documents in Commission proceedings.

(a) Except where a different method of service is specifically required by the rules in this Part, all pleadings, documents and papers of every kind (except requests for subpoenas under § 502.145, documents served by the Commission under § 502.113, and documents submitted at a hearing or

prehearing conference) in proceedings before the Commission, when delivered to the Commission or the presiding officer for filing, must show that service has been made upon all parties to the proceeding and upon any other persons required to be served by the rules in this Part. Such service must be made by delivering one copy to each party; by e-mail; in-person hand delivery; or United States mail service, and be properly addressed with postage prepaid; by courier; or by facsimile. Service should be made in the same manner in which any pleading or document is filed with the Commission. For example, if a pleading is filed by e-mail pursuant to § 502.2(f)(3), service should also be made by e-mail.

(b) When a party has appeared by attorney or other representative, service upon each attorney or other representative of record will be deemed service upon the party, except that, if two or more attorneys of record are partners or associates of the same firm, only one of them need be served.

4. Revise § 502.115 to read as follows:

§ 502.115 Service in rulemaking and petition proceedings.

Service on all prior participants in a rulemaking or a petition proceeding must be shown when submitting comments or replies beyond the initial round, including those involving disposition of petitions for rulemaking (Rule 51), petitions for declaratory order (Rule 75), petitions general (Rule 76), notices of proposed rulemaking (Rule 52), proceedings under section 19 of the Merchant Marine Act, 1920, (46 U.S.C. 42101) (Part 550), and proceedings under section

13(b)(6) of the Shipping Act of 1984 (46 U. S.C. 41108(d)) (Part 560). A list of all participants may be obtained from the Secretary of the Commission.

5. Revise § 502.116 to read as follows:

§ 502.116 Date of service.

The date of service of documents served by the Commission will be the date shown in the service stamp placed on the first page of the document. The date of service of documents served by parties will be the date when the document served is transmitted by e-mail, deposited in the United States mail, delivered to a courier, or delivered in person. If service is made by more than one method, for example e-mail and also U.S. mail service, the date of service will be the earlier of the two dates. In computing the time from such dates, the provisions of § 502.101 shall apply. [Rule 116.]

Subpart M – Briefs; Requests for Findings; Decisions; Exceptions

6. Revise § 502.222 to read as follows:

§ 502.222 Requests for enlargement of time for filing briefs.

Requests for enlargement of time to file briefs shall conform to the requirements of § 502.102.

7. Revise § 502.228 to read as follows:

§ 502.228 Request for enlargement of time to file exceptions and replies to exceptions.

Requests for enlargement of time to file exceptions, and briefs in support of such exceptions, or replies to exceptions, must conform to the applicable provisions of § 502.102. Any enlargement of time granted will automatically extend by the same period, the date for the filing of notice or review by the Commission. [Rule 228.]

Subpart T – Formal Procedure and Adjudication of Small Claims

8. Revise § 502.319 to read as follows:

§ 502.319 Date of service and computation of time.

(a) The date of service of documents served by the Commission will be the date shown in the service stamp placed on the first page of the document. The date of service of documents served by parties will be the date when the document served is transmitted by e-mail, deposited in the United States mail, delivered to a courier, or delivered in person. If service is made by more than one method, for example e-mail and also U.S. mail service, the date of service will be the earlier of the two actions. In computing the time from such dates, the provisions of § 502.101 shall apply. [Rule 319.]

(b) In computing any time period prescribed or allowed under the rules in this Part, the period begins on the day following the act, event, or default that triggers the period and includes the last day of the time period. If the last day is a Saturday, Sunday, or federal holiday, the time period continues to the next

day that is not a Saturday, Sunday, or federal holiday. If the presiding officer prescribes or allows an act, event, or default by reference to a specific date, that date will govern. If the Commission's offices are inaccessible on the last day for a filing, the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or federal holiday.

§§ 502.113, 502.132, 502.135, 502.201, 502.221, 502.227, 502.228, and 502.408 [Amended]

9. In addition to the amendments set forth above, in 46 CFR Part 502 remove the words "five (5) days" or "five days" or "5 days" and add, in their place, the words "seven (7) days" in the following places:

- a. Section 502.132(c);
- b. Section 502.135(a);
- c. Section 502.201(c);
- d. Section 502.221(f);
- e. Section 502.222;
- f. Section 502.227(e);
- i. Section 502.228; and
- j. Section 502.408(a)

By the Commission.

Karen V. Gregory
Secretary

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